



PORT MALABAR HOLIDAY PARK  
MOBILE HOME PARK RECREATION DISTRICT

215 Holiday Park Boulevard NE  
Palm Bay, Florida 32907-2196

---

BOARD OF TRUSTEE – WORKSHOP MEETING  
October 28, 2013 - 7:00 PM

**1. Call to order**

By: Joanne Gaughan, Chairman, at 7:00 P.M.

**2. Invocation**

By: Becky Earnest

**3. Pledge of Allegiance**

Led by: Joanne Gaughan, Chairman

**4. Roll Call**

By: Marion “Molly” Stone, Secretary; Joanne Gaughan, Chairman; Rebecca “Becky” Earnest, 1<sup>st</sup> Vice Chairman; Philius “Phil” Matton, 2<sup>nd</sup> Vice Chairman; Donald Wink, Assistant Treasurer; Allison Kelly, Assistant Secretary; Rodney “Rod” Lindsay, Trustee and Harald Albinus, Trustee. All acknowledged their presence. Richard Kissinger, Treasurer was absent. Cheryl Ennis, District Manager was present with Sharon Johnson recording.

**5. Announcements by Chairman**

Joanne Gaughan noted that the format to the agenda was altered to allow the guest speaker, Karl Bohne, the District’s attorney to discuss the Deed of Restrictions first. Joanne Gaughan introduced Attorney Karl Bohne.

**6. Guest Speaker - The Districts Attorney, Karl Bohne, from Schillinger & Coleman, P.A.**

Questions concerning the Deed of Restrictions were previously submitted to the attorney. Karl Bohne read the question and his answers (see attached) and answered follow-up questions regarding the subject matter.

Harald Albinus asked about the 2013 HOA bill, how that applies to us. The lawyer explained that the HOA bills specifically applies to Homeowners Association. The Sunshine Law and Public Records Law govern Holiday Park.

Allison Kelly asked the attorney if we changed the DOR and have a stipulation made that if someone violates the DOR can we enforce removal of that person from that property, the attorney’s response was “NO”. Allison Kelly then asked how the District can proceed in enforcing the DOR, without added expense. According to the attorney, enforceability is always an issue.

Becky Earnest asked what options there are if the property had been abandoned. The lawyer explained even though it may be abandoned it does not mean that the person gave up title. You could put a lien on it, and would be good for 5 years. If you were to do a title search and find no prior liens on the property you might want to put a lien on it and foreclose because

if the lien for \$1000.00 and the process costs you \$2000.00 you might be ahead of the game and may be able to market the property for sale but, it depends on what is found during a title search.

Mr. Bohne also reference to the fact that there are a lot of properties in the park that have tax certificates on them, it would not be advisable to do anything with respect to enforcing liens on those before you take title back you will have to pay those certificates off.

Mr. Bohne stated that the DOR, documents, and amendments need to be cleaned up and brought current. Rules and regulations should be reviewed as well. It would be advisable to get a Committee together and make recommendations to the Trustees.

The ACC was created by the Board of Trustees who appoints the members. They also have to comply with the Sunshine Law and the Public Records Law requirements. They only have the authority that you give it. They do not have the right to fine or go on properties looking for violations unless there is consent. The ACC can go on property when the owner submits a "FORM" such as putting on a shed or altering grounds.

Rod Lindsay asked since you are not allowed on the property unless warranted, how can the property be evaluated as to whether the property needs to have a lien put on it.

Mr. Bohne stated that there are several ways, if the situation where the condition jeopardizes health, safety and welfare of the community, there are circumstances that will allow you to go on the property.

Rod Lindsay asked about the county holding the tax certificates what happens to the property.

Mr. Bohne explained that if the property is worth \$5,000 and \$8,000 is owed on taxes then a discussion should be made whether or not it is worth it to invest but that is totally up to the Board to decide.

Donald Wink asked about the property where the Gazebo used to be. Cheryl Ennis explained that there are no taxes on this property. He then asked whether we could purchase the property. He asked the attorney if they are not willing to sell the property, even though we do all the maintenance on the property, are we entitled to getting anything back on this property.

Mr. Bohne explained that we have tried to buy this property in the past. We can try and get something written into the DOR. Cheryl explained that this property is part of the Special District / non- taxed and is a non-buildable lot. A Mobile Home Park Recreation District does not have the power of Eminent Domain.

Allison Kelly asked the attorney if the Eminent Domain is in the statutes.

Mr. Bohne explained that Chapter 418 has two parts – there is the 1<sup>st</sup> part for Special Districts, and a section in there on eminent domain. Then in 418.30 is where they authorize the creation

of Mobile Home Park Recreation Districts, next part is Powers of the Board, and there is no reference there to eminent domain.

Becky Earnest explained that we removed the Gazebo from the property in question as it had deteriorated, what happens if we put another Gazebo on that property.

The attorney explained that unless the owner gives permission to put another Gazebo or anything else on that property, you are not allowed to do it, its private property.

Donald Wink suggested that we could put another Gazebo on the property which would be removable. The attorney explained that we would be trespassing, which he also explained that you would need authorization from owner to make improvements on that lot whether temporary, or permanent. He advises against it.

Cheryl Ennis asked the lawyer if we knew that the bank has started foreclosure proceedings on a home and they do not take full title can we force the bank to do that. The attorney thinks that we can ask the court to move it along.

Allison Kelly asked about units that have a tax certificate and the property is in a trust or a life trust. The attorney stated that there is no difference, but you might be able to sue the trust for a money judgment.

Allison Kelly asked if Resolutions, Ordinances, and Amendments need to be recorded, or can we do away and combine with the By Laws, or do the residents have to vote on them.

DOR and By-Laws are different. The By-Laws are how the Board operates, and can be amended by the Board but has to be at an open meeting. The DOR whether ordinance or resolution, those documents would have to be voted on by the owners and passed by the percentage and then recorded. The attorney's suggestion for convenience if you can come up with a restated DOR which incorporates all the other stuff and put into one document and incorporates any changes, if the members vote on that then you can record that document. That way there will be no second-guessing.

Becky asked if we could update the DOR's in segments. The attorney explained that it would defeat the purpose of putting everything together.

Allison asked if we were missing ordinances or resolutions what can be done. The lawyer thinks that he may have documents that the office does not have. Another suggestion is that the committee gather everything that they have and Mr. Bohne will send over what he has on file, and then he recommends that everything be categorized and the committee should address one thing at a time, and put into one document and then send the full recommendation to the board.

Harald Albinus asked the attorney if you moved into the park after 1980, does anything after that not apply? The lawyer stated that anything recorded does apply.

When forming a committee Harald Albinus asked should the Board appoint people for the committee? You have 9 members of the Board, each should make a recommendation and then the board votes on it. That committee, is an "advisory committee" to the Board and makes recommendations and is bound by the Sunshine Law and the Public Records Law. Becky added that there should only be 1 Trustee on the Committee.

Phil Matton asked if the attorney would have an easy way of understanding the Sunshine Law.

Simply put, the Sunshine Law prohibits two or more members from the same Board from meeting in private to discuss any business that could reasonably come before the Board for a vote in the future.

The lawyer stated that there are 2 very important things to remember:

(1) Need to distinguish between Owners and Electors (Registered Voters) of the community. Not everyone that is an Owner is an Elector. In reading the Deed of Restrictions, every owner has a right to vote on an amendment, as opposed to only Electors have the right to vote for Trustees.

(2) Deed Restrictions need to be looked at very carefully. Recommendation is that everything should be consolidated into one. DOR, Ordinances, and Resolutions are on equal footing and should be all enforced the same way.

Joanne Gaughan asked the Attorney if he would take some questions from the Public. Mr. Bohne stated that he is the District's Attorney and could not answer any legal questions, but he will take some questions.

Carol Helton, 342 Holiday Park Blvd., questions regarding the history of DOR, and amendments: everything that is recorded should be a public record, the Clerk of Courts only go back to so far. How do we acquire the prior documents without ordering a title search? How do we know what to amend if we do not know what is public record? In order to change, or modify or amend what's public record we have to know. We are trying to get to the point where we are going to need a title search. If it has not been recorded then it's not enforceable. I think we are trying to enforce things that have not been placed in public record. We can draw up a new DOR document that states in the beginning that this document supersedes all previous documents, and all previous documents are null and void, and create a new Deed Restriction document.

The attorney stated that the Clerk's website only goes back to 1981. You will not be able to get prior documents without getting a title search, you could do a title search but its not 100% on the Clerks Website. The original declaration was February 18, 1970. If you want to start from scratch, there was an amendment to the declaration done in October 1970. If you are creating a new comprehensive document you might want with the understanding that it only going to be binding in the new document.

Cheryl Ennis stated that we would have a whole new document from start to finish and that would be it.

Most of the rules would only affect the people who move in after the document passes.

John LaLima, 1055 Sunflower Lane, asked about changing the deed restrictions and bringing them up to code, can we take the ordinance back to the Board and vote on them, or are all ordinances going to be null and void.

Joanne Gaughan explained that we want to make one document and call it a Deed of Restrictions.

Eileen Kraus, 1121 Lindsay CT, wants to be clear in her own mind, regarding the parcel of land that we do not own, if someone falls can we be sued? According to the attorney we are liable for failure to maintain.

Donna Matton, 265 Holiday Park Blvd., said her committee is in the process of creating a new ACC application and asked if it should be put on the application to ask permission for the right to go on the property that is being worked on. If we find that someone is doing something that wasn't approved can we go on the property and tell them to stop?

According to the attorney, permission to go on the property would be a great idea to put on forms. Anything that is being done without approval should be turned over to Cheryl, the District Manager, to let her handle it.

Keith Rittscher, 391 Holiday Park Blvd., asked if the taxes are not paid and we buy it and in 2 years we apply for a tax deed, we can now go on the property and have use of it. Can we fix it up and have right to go on it and do something with it?

Mr. Bohne asked why you would want to improve the site without paying off the tax certificate?

Joanne Gaughan asked that if someone had not paid his or her 2012 taxes and we purchase the tax certificate within 2 years we can make application for a tax deed.

Mr. Bohne stated that you could apply for a tax deed however you would have to pay off all other tax deeds with interest. He added that Title companies have required the holder of the tax deed file a quiet title action. This would be the last step to clear title so that if you decided to sell in the future.

Rod Lindsay asked if the District Manager could go on the properties? Attorney Bohne stated that she can go and speak with them as the agent of the park but if they ask her to leave she must do so.

Teresa Grimes, Holiday Park Realtor, asked if anyone had checked into the Palm Bay Utilities bills which would be due as well.

Joanne Gaughan thanked Mr. Bohne for coming and hoped that questions have been answered. We will be getting back to formulate a committee.

**7. Board Meeting Minutes - approval of the October 14, 2013 Board Meeting minutes**

The meeting minutes of October 14, 2013 were distributed to the Board of Trustees for review and posted on the District's bulletin board and website for review. Becky Earnest "made a motion to approve the minutes of October 14, 2013 Regular Meeting. Harald Albinus seconded the motion. A vote was called. Motion carried

**8. Addition of gate at R.V. Compound**

Cheryl Ennis explained that Transfield Services was called about extending the R.V. compound fence to the I-95 sound wall in order to avoid installing new fence, when needed, along the back line of the R.V. Compound. The existing permit does not allow for installing anything in the 5' easement, however, Transfield Services who provided assessment management has approved the installation. Approval letter attached.

Allison Kelly "made a motion to approve the addition to the fence contract in the amount of \$1275.00 to install a 16' double drive gate to the fence and sound wall. Becky Earnest seconded the motion. A vote was called. Motion carried.

**9. Public Comment - none**

**10. Trustees remarks**

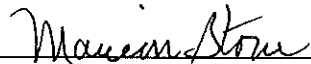
Becky Earnest reminded everyone that there is a Fundraiser on November 12<sup>th</sup> at Rooney's. 10% of the proceeds goes back to the HPPOA.

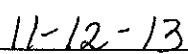
Joanne Gaughan thanked everyone for coming out. Also on the agenda at the next meeting will be approval for the guidelines for the committee and will take into consideration everything discussed.

There will be a Special Meeting on November 7<sup>th</sup> at 3pm for two of the Trustees who had to miss 3 consecutive Regular Board Meetings.

**11. Adjournment**

Becky Earnest made "a motion to adjourn". Allison Kelly seconded the motion. A vote was called. Motion carried. The meeting was adjourned at 8:10pm

  
\_\_\_\_\_  
Marion Stone - Secretary  
Board of Trustees

  
\_\_\_\_\_  
Date

1. Please explain, from the conception of Holiday Park, its governing body of laws (Deed of Restrictions, Ordnanances, Resolutions.)

Answer: Prior to the formation of the District the Park was governed by an original set of basic Deed Restrictions. From the records I have it appears that the developer of the Park adopted amendments to these original Deed Restrictions, again before the district was formed.

In 1983 the city of Palm Bay adopted Ordinance 83-52 authorizing the creation of the independent district know as the Port Malabar Holiday Park Mobile Home Park Recreation district under the authority of Chapter 418 of the Florida Statutes.

Pursuant to chapter 418 the District now has the authority to enforce the per-existing Deed Restrictions. Over the years the district has amended the original deed restrictions by ordinance. However, I believe that procedure was not the best way to make amendment to the deed restrictions.

The district would adopt an ordinance authorizing the submission of the proposed amendments to the members to be voted on at a referendum election conducted during the general election of governmental candidates. First off proposing an amendment by way of an ordinance is not the correct procedure because special districts do not have statutory to adopt ordinances. Secondly conducting the vote by way of a

- b. Palm Bay Ordinance 83-52 (authorizing the creation of the district);
- c. Deed Restrictions, amendments by developer, ordinances and resolutions amend the deed restrictions are on equal footing; and,
- d. Rules and regulations

2. Which are enforceable and how?

Answer: As stated above the original deed restrictions, any amendments by the developer and any amendments adopted through the use of an ordinance or resolution are on equal footing.

For those situations which implicate the provisions of Resolution 2012-03 concerning lot maintenance, the district can impose a lien. Liens would be foreclosed as a mortgage would be. Assuming that the district is the ultimate purchaser at the foreclosure sale it will own the property subject to any prior lien or encumbrance , including taxes.

Another way is through a court process know as an injunction. That basically means that the district will allege a violation and ask the court to enjoin or force compliance, failing which a person may be held in contempt of court. As easy as that sounds it can be costly and time consuming.

3. What is your recommendation regarding these laws?

Answer: My recommendation is to have the deed restrictions reviewed, including any amendments



5. What is the advantage or disadvantage of being a "Recreational District?"

Answer: One of the down sides to being a 418 recreation district is that certain "rules" must be followed such as compliance with the Florida sunshine law and Public Records law. However, even if you were not a special district there are similar laws in place relating to private homeowners associations, but not nearly to the same extent as applicable to public bodies. Also, Trustees are bound by statutory code of ethics that would not apply to a private HOA. In addition there are requirements that must be followed under chapter 418 that would not apply to a private HOA.

Both special districts and private HOAs have assessment power. The difference is that a district assessment is treated like property taxes and if not paid will be a lien on the owners property and is treated with super priority over other non tax liens. An HOA unpaid assessment can be a lien but does not enjoy priority.

As it is set up right now I really can not say there is an advantage or disadvantage. There are pros and cons but to change the scheme could be costly and would require consent of the voters. Palm Bay would also have to rescind its ordinance and an HOA would have to be set up. As I see it only those owners who would consent to be bound by an HOA would have to comply with any HOA restrictions. Also, those who do not

You may need to contact the City of Palm Bay to issue a condemnation order to declare it uninhabitable, if Resolution 2012-03 is not implicated. Alternatively, you can again pursue a fine and lien (assuming an amendment to the deed restrictions) for any matter not implicated by Resolution 2012-03 or obtain an injunction.

9. Does the ACC have the right to go onto private property without first notifying the owner?

Answer: No. In so much as the district is a public body and the ARC is an arm of the district the United States constitution and Florida Constitution prohibits the government from unlawful searches. Entering the property without consent is an unlawful search. Also, the mere giving of notice still does not authorize the entry onto private property with out consent or a warrant and consent once given can be withdrawn. One possible exception is in the case of an emergency to protect the health, safety and welfare. But in that case there had better be an imminent threat to life or property.

10. Past due assessments.

Answer: As I previously explained you district assessments are treated like similar to property taxes on the tax bill, but are not ad valorem property taxes but treated as special assessments and are collectable as other county taxes are collected. Even though the original Deed Restrictions did have language about liens for the recreational fee and lawn maintenance, to the

assessments are probably not being maintained. That being said the district could utilize the provisions of Resolution 2012-03 and lien the property and foreclose that lien. However, such foreclosures will not "wipe out" taxes or any liens superior to your lien for curing a violation. If you do receive title at the foreclosure sale you could rent the space to any one who wants to bring in their own unit. It's a bit of a risk that someone may make tax deed application or a superior lien may be foreclosed, but from what I understand there is not much interest out there in the tax certificates or current holders of tax certificate applying for tax deed. I would recommend that if title is taken by the district at foreclosure sale future taxes be paid. Eventually, those certificates issued that do not go to tax deed will expire (197.482 Expiration of tax certificate.—Seven years after the date of issuance of a tax certificate, which is the date of the first day of the tax certificate sale as advertised under s. 197.432, if a tax deed has not been applied for, and no other administrative or legal proceeding, including a bankruptcy, has existed of record, the tax certificate is null and void and shall be canceled. The tax collector shall note the date of the cancellation upon all appropriate records in his or her office. This section does not apply to deferred payment tax certificates).